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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,142	03/09/2005	Jose V. Saavedra	DOW-31668-A-US	9532

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WHYTE HIRSCHBOECK DUDEK S.C./DOW
Intellectual Property Department
555 East Wells Street, Suite 1900
Milwaukee, WI 53202

EXAMINER

KRUER, KEVIN R

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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10/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,142

Applicant(s)

SAAVEDRA ET AL.

Examiner

KEVIN R. KRUEER

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/10/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-16,20-22 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-16,20-22 and 25-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/9/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because it is not on a separate sheet. Correction is required. See MPEP § 608.01(b). The front page of the WO published application does not constitute a separate page.
2. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. ***Each of the lettered items should*** appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-16, 20-22, and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Tau et al (US 2001/0046606).

Tau discloses a coextruded, blown film comprising one core layer of a propylene homopolymer or copolymer, sandwiched between two skin layers made of a blend of linear low density polyethylene and low density polyethylene, whereas the film exhibits a haze of less than about 15% and a 2% secant modulus greater than about 50000 psi. The use of such film as liners or bags, as well as a method of making are as well therein disclosed (claims 1,18-21; page 1, paragraphs 9-11; page 2, paragraph 18; page 2, paragraphs 24-25; page 6, paragraph 53; page 6, paragraph 61-page 7, paragraph 68; page 8, paragraphs 72-77; examples A,B,C; tables 1-3). The film may comprise tie layers (0067) which are herein understood to read on layers 4 and 5. the LLDPE meets the MI of claim 8 (0055).

The mere fact that Tau does not explicitly mention the cross directional shrinkage values or force for the film does not mean that the product disclosed in (D1) does not fulfill this requirement. Thus, unless the Applicant can provide convincing arguments (in the form of comparative examples) showing that the product does not exhibit the

desired cross directional shrinkage interval, said properties are understood to be inherent because the film of Tau is compositionally and structurally identical to the claimed film.

5. The rejection of claims under 35 U.S.C. 102(b) as being anticipated by Fukada et al (US 2002/0127421) has been overcome. Fukada does not teach any of the claimed skin layer compositions. Specifically, Fukada teaches the use of only LLDPE-which is not a member of the claimed Markush group.

6. Claims 1, 8-16, 20-22, and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0388177A (Nelson).

Nelson discloses a coextruded, blown film comprising one core layer made from an ethylene vinyl acetate copolymer, a very low density polyethylene copolymer or an ethylene butyl acrylate copolymer, sandwiched between two skin layers made of low density polyethylene, whereas the film exhibits a cross directional shrinkage (or free shrink, measured according to the same standard ASTM-D-2732) of at least about 20% at 205°F. The use of such film in the packaging field, as well as a method of making are as well therein disclosed (claims 1,4,5,8,9; page 2, col.1.1, lines 1-5; page 5, col.1.7, line 43-col.8, line 54; page 6, col.1.9, lines 2-8; example 1).

The mere fact that Nelson does not explicitly mention the haze values or the 2% secant modulus, does not mean that the product does not fulfill these requirements. Thus, unless the Applicant can provide convincing arguments (in the form of

comparative examples) showing that the product does not exhibit the desired properties, said properties are understood to be inherent because the film of Nelson is compositionally and structurally identical to the claimed film.

7. Claims 1, 3-16, 20-22, and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by WO-0110643 (Banaszak).

(D4) discloses a coextruded, blown film comprising one core layer made from an ethylene/alpha olefin copolymer, sandwiched between two polymeric skin layer, possibly made of an ethylene vinyl acetate copolymer or a polypropylene resin, whereby the film exhibits a haze of less than 5% as measured by using ASTM-D-1003, and a cross directional shrink (or free shrink, measured using the same standard ASTM-D-2732) of at least about 8% at 200°F. The use of such film in the packaging field, as well as a method of making are as well therein disclosed (claims 1,5,6,8,12- 14; page 7, line 29-page 9, line 15; tables 2-5; page 19, lines 6-19; page 21, lines 12-33). The film may comprise five layers (figure 2). Furthermore, the LLDPE meets the MI of claim 8 (table 1).

The mere fact that Banaszak does not explicitly mention the 2% secant modulus, does not mean that the product does not fulfill this requirement. Thus, unless the Applicant can provide convincing arguments (in the form of comparative examples) showing that the product does not exhibit the 2% secant modulus range, said property is considered inherent to the prior art since the film is compositionally and structurally identical to the claimed film.

Response to Arguments

Applicant's arguments filed July 10, 2008 have been fully considered but they are not persuasive.

With respect to Tau, Applicant argues the amended claims require the skin layer be "devoid of a homogeneously branched polyethylene resin prepared with a single site catalyst." Applicant argues the examples of Tau all contain utilize CGC catalyst, which is a single site catalyst. The argument is not persuasive because the teaching of the reference is not limited to the preferred embodiments or the examples disclosed therein. Furthermore, Tau teaches Ziegler Natta catalysts may be used as well (0054). The examiner also takes the position that the type of catalyst utilized is a method limitation that does not patentably distinguish a claimed product from the prior art unless applicant shows that the method of making the product inherently results in a materially different product. In the present application, no such showing has been made. Applicant argues the polymers of Tau do not have the "identical structure" but provides no further explanation and does not provide any evidence to support said conclusion.

With respect to Nelson, Applicant argues claim 1 has been amended to incorporate the limitations of claim 2 and given that claim 2 was not rejected over Nelson, all of the currently pending claims must be patentable over Nelson. The examiner notes claim 2 was excluded by the rejection statement, but takes the position that said exclusion was an obvious error on the part of the examiner. All of the limitations of claim 2 were addressed in the rejection. Furthermore, claim 17 (which contained all of the limitations of claim 2) was rejected under Nelson. Thus, the Office

Action ~~when~~ considered as a whole demonstrates Nelson anticipated the limitations of claim 2.

With respect to Banaszak, Applicant argues the reference teaches a different principle of operation because the reference uses an IPN network for their films whereas IPSNS are not necessary for the purposes of the current invention. Said reference is noted but is not persuasive because the pending claims do not exclude the use of an IPN. Furthermore, Banaszak teaches the claimed Markush members and claimed film structure. Therefore, the rejection is maintained.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN R. KRUER whose telephone number is (571)272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin R. Krue/

Patent Examiner-Art Unit 1794